

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES
BANKRUPTCY COURT
FILED MAIL

DEC 28 2004

In re the petition of:

STEVEN J. QUERIO

a/k/a Steve Querio,

Debtor.

REAFFIRMATION
AGREEMENT

Case No. 04-33143-svk

C. L. AUSTIN CLERK
MILWAUKEE, WISCONSIN

WHEREAS, Steven J. Querio, hereafter referred to as "Debtor," has executed a Guaranty on September 14, 2004, a copy of which is attached hereto as Exhibit "A," by which said Debtor assumed responsibility for the obligation of Shawano Avenue Healthcare Ventures, LLC, dated September 10, 2004 in the amount of Six Hundred Fifty Thousand and no/100 (\$650,000.00), and

WHEREAS, Debtor has filed a petition in the United States Bankruptcy Court for the Eastern District of Wisconsin for relief under Chapter 7 of the Bankruptcy Code and has included the aforesaid debt due to Bank in his schedules,

NOW, THEREFORE, Debtor and Bank hereby agree as follows:

1. Debtor guaranties to Bank the payment and performance of the obligation of Shawano Avenue Healthcare Ventures, LLC, dated September 10, 2004 in the amount of Six Hundred Fifty Thousand and no/100 (\$650,000.00) Dollars, a copy of which is attached hereto as Exhibit "B."

2. It is understood that this Reaffirmation Agreement shall be enforceable against Debtor at the time of discharge, if Debtor is granted a discharge.

3. It is understood that this Reaffirmation Agreement is enforceable against the Debtor after discharge. The Debtor understands that this Agreement is not required under bankruptcy law. The Debtor understands that he is entering into this Agreement freely, voluntarily and fully informed of his rights. The Debtor acknowledges that this Agreement does not pose an undue hardship on him.

4. Both parties acknowledge that Debtor has a right to rescind this Agreement at any time prior to discharge or within 60 days after this Agreement is filed with the court, whichever occurs later. Any rescission of this Agreement shall be made in writing and notice shall be given to Stephen A. Kase, c/o Baylake Bank at P.O. Box 9, Sturgeon Bay, WI 54235-0009, by first class mail.

Dated: 12/22/04

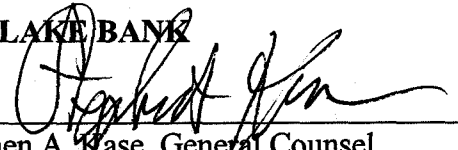
DEBTOR:



Steven J. Querio

Dated: 12-23-04

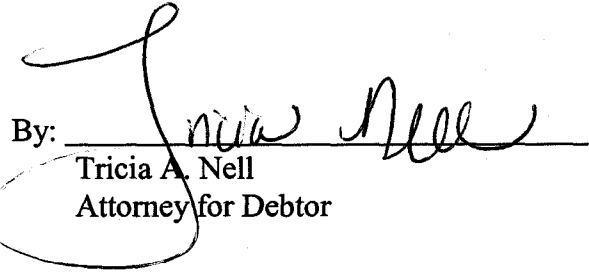
BAYLAKE BANK

By: 

Stephen A. Kase, General Counsel

Attorney's Declaration: This agreement represents a fully informed and voluntary agreement that does not impose an undue hardship on the Debtor or any dependent of the Debtor.

Dated: 12/22/04

By: 

Tricia A. Nell
Attorney for Debtor

Drafted by:
Stephen A. Kase
P.O. Box 9, Sturgeon Bay WI 54235
Phone No.: (920) 743-5551
State Bar No.: 01015332

GUARANTY

STURGEON BAY

(City)

WISCONSIN

(State)

SEPTEMBER 10, 2004

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SHAWANO AVENUE HEALTHCARE VENTURES, LLC

herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 9/10/04 IN THE AMOUNT OF \$650,000.00 and any extensions,

renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The term "Indebtedness" as used in this guaranty shall not include any obligations entered into between Borrower and Lender after the date hereof (including any extensions, renewals or replacements of such obligations) for which Borrower meets the Lender's standard of creditworthiness based on Borrower's own assets and income without the addition of a guaranty, or for which a guaranty is required but Borrower chooses someone other than the joint Undersigned to guaranty the obligation.

The term "Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder. However, in an open-end transaction, in which more than one person may be liable on this Guaranty, any of the Undersigned may limit his or her liability for future extensions of credit by giving written notice of the intent to do so to the Lender. Liability for future extensions of credit will cease 15 days after such notice is received by the Lender.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. This agreement will be in default if: (i) the borrower is in default (as defined in Wisc. Stat. § 425.103, if applicable to the underlying transaction) on the promissory notes(s) or any security agreement securing the note(s); or (ii) the Undersigned fails to comply with any term of this agreement, and this failure materially impairs the condition, value or protection of Lenders right to the collateral or materially impairs the Undersigned's ability to pay the obligations due under this agreement.

If an act constituting a default occurs, and the right to cure attaches, the Lender will provide a written notice of the default to each person obligated on the Indebtedness, including the Undersigned. Such notice will be provided at least 15 days prior to any action by the Lender to accelerate the maturity date or commence any action.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 650,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all statutory costs and statutory attorneys' fees referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

If the Indebtedness is in Default as defined in paragraph 3, then Lender may set off any amount due and payable under this guaranty against any right the Undersigned may have to receive money from Lender, after sending written notice of the Undersigned's default and right to cure and waiting 15 days, if applicable.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____;

☐ secured by _____

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

The Undersigned hereby acknowledges receipt of a copy of this Guaranty on today's date.

Undersigned
STEVEN J. QUERO

Date

Undersigned

Date

(page 1 of 2)

ADDITIONAL PROVISIONS

5. The Undersigned will pay or reimburse Lender for all statutory costs and statutory attorneys' fees incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation, bankruptcy or insolvency proceedings.

6. Whether or not any existing relationship between the Undersigned and Borrower has changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned, unless otherwise provided by the Wisconsin Consumer Act. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue Borrower or any other guarantor or other person liable for the Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) the foreclosure or enforcement of any collateral security; (viii) the transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness as permitted by Wisc. Stat. §§ 422.413 and 422.418; (x) any election by the Lender related to the Borrowers bankruptcy under § 1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned shall be and will remain liable for any deficiency, if allowed by Wisc. Stat. § 425.209, remaining after foreclosure of any mortgage or security interest securing Indebtedness. The Undersigned shall be and will remain obligated to pay Indebtedness even though any other person obligated to pay the Indebtedness, including Borrower, has such obligation discharged in bankruptcy. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

8. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness, unless otherwise provided by the Wisconsin Consumer Act. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

9. This guaranty shall be enforceable against each person signing this guaranty. If there is more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable, unless otherwise provided by the Wisconsin Consumer Act. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. The validity, construction, and enforcement of this guaranty shall be governed by the laws of the State of Wisconsin. The Undersigned waives notice of Lender's acceptance hereof.

P.005/006

BEP-12-2004(102) 10:50 Fox River Healthcare

SHAWANO AVENUE HEALTHCARE VENTURES, LLC
1749 SHAWANO AVENUE, SUITE 100, PO BOX 12300
GREEN BAY, WI 54307

BAYLAKE BANK
270 N FORTH AVE
P.O. BOX 8
STURGEON BAY, WI 54226-1008

TRM 20-1504220
Loan Number 224071
Date 08/10/2004
Maturity Date 10-12-2012
Loan Amount \$ 500,000.00
Payment Of
Lender/Forty 150710

BORROWER'S NAME AND ADDRESS
"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I provide to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of **500,000.00** Dollars \$ 500,000.00.

☒ Single Advance: I will receive all of this principal sum on **10-10-2004**. No additional advances are contemplated under this note.

☒ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On **10-10-2004** I will receive the amount of \$ **500,000.00** and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and covenants of _____

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions), _____ at the rate of _____

INTEREST: I agree to pay interest on the outstanding principal balance from **10-10-2004** at the rate of _____ per year until **10-12-2012**.

☒ Variable Rate: This rate may change as stated below.

☒ Index Rate: The future rate will be **1.500 PERCENT ABOVE** the following index rate: **HIGHEST US PRIME RATE PUBLISHED IN WALL STREET JOURNAL MONEY RATES**.

☐ No Index: The future rate will not be subject to any interest or compound basis. It will be entirely in your control.

☒ Floating and Floating: The rate on this note may change as often as **EVERY MONTH BEGINNING 10-01-2004**.

A change in the interest rate will take effect **ON THE FIRST DAY OF THE FOLLOWING MONTH**.

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

☐ The rate may not change more than _____ % each _____

☐ Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

☐ _____

ACCTUAL METHOD: Interest will be calculated on an **ACTUAL/360** basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note ending after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to **2.00% HIGHER THAN THE DISCLOSED NOTE RATE COMPLETED ON THE SAME BASIS AS THE INTEREST RATE BEFORE MATURITY**.

☒ **LATE CHARGE:** If a payment is made more than **15** days after it is due, I agree to pay a late charge of **5.00%** OF THE LATE AMOUNT.

☒ **RETURNED CHECK CHARGE:** I agree to pay a charge of **\$10.00** for each check returned uncollectible because of insufficient funds.

☐ no account or insufficient credit.

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount.

PAYMENTS: I agree to pay this note as follows:

60 MONTHLY PAYMENTS OF \$8,502.73 BEGINNING 10-12-2004 AND 1 PAYMENT OF \$8,502.44 ON 10-12-2012. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

PURPOSE: The purpose of this loan is **COMMERCIAL**.

ADDITIONAL TERMS: **"THE ACTUAL AMOUNT OF THE FIRST PAYMENT MAY CHANGE"**

SPOUSAL NOTICE - WISCONSIN RESIDENTS ONLY

☐ **Married Borrower:** If checked, the obligation evidenced by this note and any agreement securing this note is incurred in the interest of my marriage or family.

☒ **Non-Signing Spouse:** The undersigned is married to the borrower signing this note, and hereby known of the credit extended under this note, and without any notice of this extension of credit.

☐ **SECURITY:** This note is separately secured by (describe separate instruments by type and date): _____

This section to be completed only when the note is secured by separate instruments (see note 10-10-2004).

Signature for Lender _____

LES BEING: IF COMMERCIAL LOANS

UNIVERSAL NOTE
BAYLAKE BANK, 1997 Bankruptcy Court, Inc. 22, Bank of America 2004002

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EXHIBIT "B"

